IN THE HIGH COURT OF JUDICATURE AT BOMBAY
C.A.J.

WRIT PETITION NO. 3559 OF 2002

Shri. Somnath J. Ubale .... Petitioner
Versus

Deputy Director of Education, Pune. ... Respondent

Mr. S.B. Deshmukh i/by A.V. Anturkar for Petitioner.

Mr. C.R. Sonawane, A.G.P. for R. No. 1.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : MAY 05, 2005

P.C.

. Rule. Heard forthwith.

. The Petitioner was the senior most teacher in an aided school which is governed by the provisions of the M.E.PS. Act.As the Petitioner was short of experience by a few months for consideration to the post of Principal, the Management appointed petitioner to the post but did not seek relaxation from the department. As there was no relaxation the order of appointment dated 3rd January, 2001 were recalled.

. Aggrieved by the action, Petitioner preferred a petition before this court being Writ Petition No. 3672 of 2001. After considering the matter by order dated 24th August, 2001, the decision of the Education Officer dated 3.7.2001 was set aside.

Liberty was to given to the Management to re apply by fresh application seeking relaxation of the qualification in accordance with rule 3 (2) of the M.E.PS. Rules. The Deputy Director was directed to consider the application and dispose of the same by a speaking order. The Petitioner was allowed to continue as Headmaster.

. Before the order passed in Writ Petition No. 3672 of 2001, the Petitioner had filed one more Petition being Writ Petition No. 381 of 2000 which was disposed of on 8th April, 2001. The communication dated 14.1.2000, withdrawing Petitioner's promotion to the post of Head Master was cancelled as also the order dated 6.3.1996 of the Education Officer for the reasons disclosed in the order. The Respondent Nos. 2 and 3 in that Petition were directed to consider the application dated 3.10.1996 afresh. An application was made for relaxation by the management dated 18th Sept. 2001. That has been rejected by order date 30.5.2002. That is the subject matter of the present Petition.

. On behalf of the Respondent Mr. R.N. Jadhav has filed reply opposing the grant of relief. The

first contention raised is that considering rule 3(2) of the M.E.P.S. Rules, 1981 first the approval for relaxing had to be taken and then appointment had to be made. Considering the contention by the Petitioner, that his case was similar to one Mr. Vetal, it is sought to be differentiated on the ground that application in the petitioner's case was made after the Petitioner had completed necessary years of experience whereas in the case of Vetal an application was made before Vetal had completed five years and he became eligible.

. In so far as Rule 3(2) is concerned, after considering the ambit of the rule, we are not in a position to agree with the contention advanced that there cannot be a post facto relaxation. All that the rule says is that the application must be made for relaxation. Therefore, at the highest, between the date of appointment and till the petitioner completes five years of experience, the Petitioner cold have been denied the scale of the Headmaster. Consequently we do not find that the case of Petitioner and Vetal are different. In the case of Vetal, post facto approval was granted in our opinion rightly so considering rule 3(2). We therefore, see no reason as to why relaxation

cannot be granted in the case of Petitioner. Even otherwise, the Petitioner became eligible for consideration on completion of the necessary experience. There was no other candidate senior to the Petitioner. Petitioner therefore, had to be promoted in his own right.

. Considering the above the following order :

. The communication dated 30.5.2002 is set aside. As the Petitioner satisfies all other requirements, the application by the management for relaxation is allowed. The respondents are directed to treat the Petitioner as been regularly appointed to the post of Headmaster and to grant him scale of post of Head Master on hie completing five years experience as trained graduate teacher. Petitioner to be paid all benefits including back wages as on that date. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)